

October 12, 2009

**VIA ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554

**Re: Call Blocking by VoIP-Based Calling Service Providers; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Broadband Industry Practices*, WC Docket No. 07-52.**

Dear Ms. Dortch:

I am the President of Great Lakes Communication Corp., a local exchange carrier based in Spencer, Iowa. I have noted with interest the Commission's recent inquiry into Google Voice and Google's admitted practice of blocking calls to rural areas, such as Spencer, Iowa. Although I welcome this development, I respectfully submit that the Commission needs to expand its inquiry to address the frequent practice of call blocking by other VoIP-based calling service providers such as MagicJack and Speakeasy which provide the IP-in-the-middle connection for calls between traditional landline and/or wireless telephones using underlying local exchange carriers.<sup>1</sup> These calling providers have used the Commission's inaction on classifying their product offering as either a "telecommunications service" or an "information service" as an excuse to routinely engage in self-help techniques that traditional common carriers are prohibited from employing.<sup>2</sup>

Google argues that it is entitled to pick and choose the exchanges to which it can refuse to send traffic,<sup>3</sup> in part, because Google Voice is free and is currently offered only through invitation. These excuses are not available to companies such as MagicJack and Speakeasy which offer their services for a fee directly to the public.<sup>4</sup> The Commission itself has stated that VoIP-based calling services are "services that mimic traditional telephony."<sup>5</sup> VoIP calling service providers, however, should not be able to pick and choose which aspects of telephony

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<sup>1</sup> The Commission's inquiry should include the underlying LECs that conduct the blocking on the "VoIP" carriers' behalf: Bandwith.com in the case of Google Voice; YMax Communications in the case of MagicJack; and Covad Communications Group in the case of Speakeasy.

<sup>2</sup> See *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, DA 07-2863, ¶¶ 1, 5 (WCB June 28, 2007).

<sup>3</sup> <http://googlepublicpolicy.blogspot.com/2009/10/sex-conference-calls-and-outdated-fcc.html>.

<sup>4</sup> See MagicJack's product offering at <http://www.magicjack.com/1/faq/>; and Speakeasy's at <http://www.speakeasy.net/business/voip/plans/>.

<sup>5</sup> *In re IP-Enabled Services*, 19 FCC Rcd. 4863, 4866 n. 7 (2004).

they can mimic, but then ignore the Commission's explicit prohibitions against various forms of self-help, such as call blocking, in which analog voice service providers are forbidden to engage.

Indeed, the Commission has a committed policy of advancing "competitive neutrality" — a principle that requires advantaging no one technology over another.<sup>6</sup> Indeed, it would be entirely incongruous if an iPhone App for conference calling could not be blocked under FCC regulations, but a call using a VoIP-based service on a traditional telephone could be blocked. But barring traditional common carriers from engaging in self-help while permitting VoIP-based calling service providers to block calls to any phone number they choose, based on the called party's location or the content of the communication, is leading to such absurd results. And it should be noted that VoIP carriers such as MagicJack appear to have no objection to particular services — such as free conference calling — when they are the entity providing the service.<sup>7</sup> By permitting such anti-competitive conduct, however, the Commission is certainly not promoting the level playing field mandated by the Commission's "competitive neutrality" policy.

Further, despite holding themselves out to the public as offering unrestricted access to the PSTN,<sup>8</sup> the VoIP carriers are in fact restricting access to advanced telecommunications capabilities to rural Americans. Congress, however, has expressed a clear mandate for broadband availability, devoting Section 706 of the 1996 Act to requiring that the FCC report regularly on the "availability of advanced telecommunications to *all* Americans" and to "encourage the deployment ... of advanced telecommunications capability."<sup>9</sup> The Commission's efforts to implement this mandate are numerous, having initiated several proceedings devoted to broadband deployment<sup>10</sup> and reiterating how crucial is the goal of increasing broadband access.<sup>11</sup> It is therefore inexplicable to permit VoIP carriers unilaterally to dictate to whom they will send traffic, what areas they will refuse to serve, and what content they will permit their customers to access.

In addition, in the Commission's *Internet Policy Statement*, the Commission recognized that it "has jurisdiction necessary to ensure that providers of telecommunications for Internet access or Internet Protocol-enabled (IP-enabled) services are operated in a neutral manner."<sup>12</sup> As part of the *Internet Policy Statement*, the Commission stated that to "preserve and promote the open and interconnected nature of the public Internet ... consumers are entitled to access the

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<sup>6</sup> *In re Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, 7541 ¶ 44 (2006).

<sup>7</sup> See, e.g., MagicJack's free conference call service offering at <http://www.freemagicconference.com/>.

<sup>8</sup> See, e.g., MagicJack's homepage at <http://www.magicjack.com/7/index.asp> (stating customers can "make all the free calls [they] please.")

<sup>9</sup> 47 U.S.C. § 157 nt.

<sup>10</sup> E.g., GN Docket No. 09-137, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Notice of Inquiry, FCC 09-65 (rel. Aug. 7, 2009); GN Docket Nos. 09-47, *et al.*, *Contribution of Federal, State, Tribal, and Local Government to Broadband*, DA 09-2122 (Sept. 25, 2009).

<sup>11</sup> E.g., FCC "Blogband," available at <<http://blog.broadband.gov/>>; FCC, Strategic Plan 2009-2014, available at <<http://www.fcc.gov/omd/strategicplan/>>.

<sup>12</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Policy Statement, FCC 05-151, ¶ 4 (Sept. 23, 2005) ("*Internet Policy Statement*").

lawful Internet content of their choice” and to “use the services of their choice.”<sup>13</sup> By habitually blocking their customers calls to rural areas, however, VoIP-based calling providers are in violation of these principles.

Thus, regardless of how the Commission ultimately classifies VoIP-based communications, or whether the problem of call blocking is analyzed from a competitor’s or a consumer’s perspective, one thing is clear: VoIP-based calling service providers should not be permitted to block calls. This practice, if left unchecked, would restrict the content their subscribers can access.

As the Commission itself has noted, VoIP services have “experienced dramatic growth.”<sup>14</sup> So too has VoIP service providers’ reliance on impermissible self-help tactics that threaten the ubiquity of the nation’s telecommunications network. As the Commission has previously stated, “[i]f such refusals to exchange traffic were to become a routine bargaining tool, callers might never be assured that their calls would go through. We are particularly concerned with preventing such a degradation of the country’s telecommunications network.”<sup>15</sup>

Great Lakes therefore urges the Commission to expand the scope of its inquiry into Google’s call blocking to include major VoIP-based calling service providers such as MagicJack and Speakeasy. There is simply no rational basis for holding these calling service providers to a different standard and there is no reason to limit this inquiry to one carrier in light of the fact that it is an industry wide problem.

Respectfully submitted,



Joshua Nelson  
Great Lakes Communication Corp.

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<sup>13</sup> *Id.*

<sup>14</sup> 21 FCC Rcd. at 7528, ¶ 19.

<sup>15</sup> *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146, 16 FCC Rcd. 9923, 9932-33 ¶ 24 (2001).

cc: Chairman Julius Genachowski  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Michael J. Copps  
Commissioner Meredith Attwell Baker  
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